

**BEFORE THE
RESPIRATORY CARE BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

COLONDA Y. ROBINSON
1234 Oakhurst Court
Beaumont, CA 92223

Case No.: R-2074

OAH No.: L200705788

DECISION AND ORDER

The attached proposed Decision of the Administrative Law Judge is hereby adopted by the Respiratory Care Board of California, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on October 10, 2007.

It is so ORDERED October 3, 2007.

Original signed by:

LARRY L. RENNER, BS, RRT, RCP, RPFT
PRESIDENT, RESPIRATORY CARE BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

COLONDA Y. ROBINSON, R.C.P.
1234 Oakhurst Court
Beaumont, CA 92223

Respiratory Care Practitioner License No.
16705

Respondent.

Case No. R-2074

OAH No. L2007050788

PROPOSED DECISION

This matter came on regularly for hearing before Yolanda Gammill, Administrative Law Judge (ALJ), Office of Administrative Hearings, at San Diego, California on August 13 and August 14, 2007.

Deputy Attorney General Douglas Lee represented complainant.

Colonada Y. Robinson (respondent) represented herself and was present throughout the hearing.

Documentary evidence was received and testimony was given under oath or affirmation. The matter was submitted on August 14, 2007.

FACTUAL FINDINGS

1. The accusation against respondent was filed by Stephanie Nunez (complainant), while acting in her official capacity as the Executive Officer of the Respiratory Care Board of California (the board), State of California. In this action, the complainant seeks to revoke or suspend respondent's respiratory care practitioner license number 16705. The complainant also seeks an order for respondent to pay the board's costs of investigating and enforcing this action. The accusation was properly served upon respondent.

2. On December 6, 1993, the board issued Respiratory Care Practitioner License Number 16705 to respondent. Respondent's license expired on July 31, 2007. There is no history of any administrative discipline against respondent's license.

3. Respondent arrived at Moreno Valley Community Hospital (hospital) on March 13, 2007, at 6:00 p.m. to work a scheduled shift as a respiratory care practitioner. Three hours later respondent complained of a headache and chest pains. Respondent was sent to the hospital's emergency room where several tests, including a blood alcohol test, were conducted to determine the cause of respondent's symptoms. The results of the blood alcohol test showed that respondent's blood alcohol level was 0.28 at 9:44 p.m. A blood alcohol level of 0.28 is over three times the legal driving limit. Forensic Toxicologist, John J. Treuting, Ph.D. (Treuting), explained that when respondent first arrived at the hospital at 6:00 p.m. her blood alcohol level was over 0.30 because alcohol burns off at about .02 an hour.

4. Respondent claimed that on March 13, 2007, she did not go to the hospital to work but to see a therapist and friends. She claimed that she called her co-worker, Sam Montes (Montes) earlier that day and requested that he find a replacement for her because she had personal problems and that he asked her to come to the hospital to see a therapist to discuss her personal problems. Respondent explained that she went to the hospital to see the therapist but the therapist was not there so she decided to stay at the hospital to speak with her friends about her personal problems.

Respondent's claim that she went to the hospital to see a therapist and her friends is not credible for several reasons. First, Harnek Heer, respondent's supervisor, provided the work schedule for March 12 to April 22, 2007, which showed that respondent was scheduled to work on March 13, 2007, from 6:00 p.m. until 6:30 a.m. on the medical surgical floor in the pediatric section. Second, respondent wore her uniform and not her regular clothes to the hospital. Third, Mr. Montes does not indicate in his letter to the court that he found a replacement for respondent and respondent did not know if a replacement worker was found to cover her shift, even though she was at the hospital that night for three hours. Furthermore, Mr. Montes' letter does not state that he asked respondent to go to the hospital to visit a therapist. Fourth, the nursing supervisor, Erlinda Frial (Frial), remembered that when respondent was in the emergency room respondent asked to "go back to work" once she was feeling better. Finally, respondent wrote a letter on March 22, 2007, to Mr. Heer, her supervisor, in which she explained that she did not go to work "thinking [she] was incapable of performing [her] job duties. When [she] arrived at work, [she] began to feel ill."

5. Respondent admitted drinking alcohol earlier that day but claimed that her blood alcohol level was high because she had had gastric bypass surgery in 2005. Respondent provided articles from the internet that concluded that persons who have had gastric bypass surgery become intoxicated faster than persons who have not had gastric bypass surgery. Forensic Toxicologist Treuting explained that a person who has had gastric bypass surgery may get intoxicated faster but faster intoxication does not affect the blood alcohol level because the person still would have to consume the same amount of alcohol as

a person who did not have the surgery in order to reach a particular blood alcohol level. Additionally, Treuting explained that contrary to respondent's assertion, high blood pressure does not affect a person's blood alcohol level.

Respondent also asserted that no person at the hospital that day complained that she was behaving intoxicated and no one smelled alcohol on her breath. Ms. Frial acknowledged that neither she nor the other nurses at the hospital smelled alcohol on respondent's breath that night. Ms. Frial also acknowledged that no one complained about problems with respondent that night.

According to Treuting most people with a blood alcohol level of 0.28 would be in a stupor or highly confused, have cognitive memory problems, may physically not be able to respond, may be dizzy, lose hand eye coordination, and/or may pass out. However, persons with a high tolerance may appear to be operating normally but in fact are intoxicated.

According to both Ms. Frial and Mr. Montes they did not see respondent that night until she was in the emergency room. The only other employee that respondent mentioned she spoke to that night was the lab tech who called the emergency room when respondent complained of severe chest pains. No evidence was submitted that respondent came in contact with any other employee at the hospital until she became ill.

6. Respondent admitted to having an alcohol problem and claimed to have attended Alcohol Anonymous (AA) meetings since the incident. However, respondent did not provide any other evidence except her testimony to show she had attended and is still attending AA meetings. Respondent also claimed that she attended family counseling to learn how to handle stress. She explained that she was experiencing financial problems and drank alcohol to relieve her stress. Other than respondent's testimony no other evidence was submitted that showed respondent attended family counseling.

7. Respondent arrived at work highly intoxicated and in doing so disregarded the safety of the patients she was scheduled to assist. Respondent attended to at least one adult patient that night but no children.

Respondent has never taken responsibility for her actions; in fact, respondent blamed her supervisor for not removing her from the schedule when she told him she was having problems. Respondent could have removed herself from the work schedule simply by calling in sick. Respondent's problems could not have been any more serious than her patients' need for her assistance to help them breathe. Respondent chose to show up for work highly intoxicated which shows a certain callousness and self-centeredness that puts all patients under her care at risk. Respondent did not express any remorse for her actions.

8. Complainant seeks to recover costs for the prosecution of this case. Business and Professions Code section 3753.5 authorizes the award of reasonable costs, including attorney general's fees, to complainant, if complainant prevails. The submission of certification of the actual costs serves as prima facie evidence of reasonable costs. However,

the matter of reasonableness must be determined by the exercise of the discretion of the administrative law judge who presided at the hearing.

The total amount of costs sought is \$12,245.00 which includes charges for the services of the attorney general's office. This total incorporates 49.00 hours of attorney time in fiscal year 2006 - 2007 at \$158.00 per hour and 28.50 hours of attorney time in fiscal year 2007- 2008 at \$158.00 per hour. The services performed by the deputy attorney general included all the necessary tasks to analyze the investigation, prepare the pleadings, communicate with respondent and prepare for the hearing. The total amount of \$12,245.00 in costs for the services of the attorney general's office is reasonable given the nature and level of complexity of this matter. The amount of costs does not include the expert's consultation fee or the cost of the expert testifying at the hearing.

LEGAL CONCLUSIONS

1. Business and Professions Code section 3750 provides in pertinent part:

"The board may order the suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

...

(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500). . ."

2. Business and Professions Code section 3750.5 provides in pertinent part:

"In addition to any other grounds specified in this chapter, the board may deny, suspend, or revoke the license of any applicant or license holder who has done any of the following:

...

(c) Applied for employment or worked in any health care profession or environment while under the influence of alcohol.

3. California Code of Regulations (CCR), title 16, section 1399.370, states in pertinent part:

"For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered substantially related to the qualifications, functions, or duties of a

respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provisions or term of the Act."

4. Cause exists to impose discipline on respondent pursuant to Business and Professions Code sections 3750 subdivision (g) and 3750.5, subdivision (c) and Title 16, California Code of Regulations, section 1399.370 subdivision (a) in that respondent worked as a respiratory care practitioner while she was under the influence of alcohol with a blood alcohol level of 0.28. Respondent's behavior is substantially related to the qualifications, functions, and duties of respiratory care practitioner, as set forth in Factual Findings 2- 7.

5. In light of Respondent's failure to acknowledge any responsibility for her actions, the recent nature of the behavior, and the seriousness of the behavior it is in the public interest to revoke respondent's license. The evidence presented by respondent, as set forth in Factual Findings 4, 5, 6, and 7, is insufficient to mitigate the discipline. Consequently, it would be against the public's best interests to allow respondent to maintain her respiratory care practitioner license at this time.

6. Cause exists under Business and Professions Code section 3753.5 to award costs of enforcement in the amount of \$12,245.00 as the reasonable cost for prosecution of his matter as set forth in Finding 8.

ORDER

1. Respiratory Care Practitioner License No. 16705 issued to respondent, Colonda Y. Robinson, is revoked.

2. Respondent, Colonda Y. Robinson, shall reimburse the Board for the actual and reasonable costs in the amount of \$12,245.00.

DATED: 9/10/07



YOLANDA GAMMILL
Administrative Law Judge
Office of Administrative Hearings